



April 2, 2018

BY CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Glenda Owens
Acting Director
U.S. Office of Surface Mining, Reclamation and Enforcement
1849 C St. NW
Washington, D.C. 20240

Re: Citizen Complaint Under Surface Mining Control and Reclamation Act Over Failure of Powder River Basin Surface Coal Mines to Meet Contemporaneous Reclamation Requirements

Dear Ms. Owens:

Pursuant to the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §§ 1267(h)(1) and 1271(a)(1), and regulations thereunder, 30 C.F.R. § 842.12(a), WildEarth Guardians hereby writes to inform the U.S. Office of Surface Mining Reclamation and Enforcement (“OSMRE”) that violations of the Surface Mining Control and Reclamation Act (“SMCRA”) appear to be occurring in the Powder River Basin coal producing region in the states of Montana and Wyoming, and that these violations need to be inspected and remedied.

Specifically, it appears the following 17 permitted surface coal mining operations in the Powder River Basin region of northeastern Wyoming and southeastern Montana are failing to meet contemporaneous reclamation requirements set forth under 30 U.S.C. §§ 1202(e) and 1265(b)(16), and 30 C.F.R. §§ 810.2(b) and 816.100. In spite of SMCRA’s clear mandate that reclamation occur as “contemporaneously as possible” with surface coal mining operations, these mines, which cover the equivalent of nearly 300,000 acres (or more than 450 square miles), are utterly failing to ensure any meaningful level of permanent reclamation concurrent with expanded mining operations.

Surface Coal Mines Subject to This Complaint

Mine Name	Permit Number(s)	Permitted Acreage	Permittee (Parent)
Absaloka	C1985005, MT-0007G, and MT-0021B ¹	10,427	Westmoreland Resources, Inc. (Westmoreland Coal Company)
Antelope	PT0525	22,538	Antelope Coal LLC (Cloud Peak Energy)

¹ The Absaloka mine is permitted under both a State of Montana and a federal permit issued by OSMRE.

Belle Ayr	PT0214	13,407	Contura Coal West LLC (Contura Energy) ²
Black Thunder	PT0233	49,295	Thunder Basin Coal Company LLC (Arch Coal)
Buckskin	PT0500	9,020	Buckskin Mining Company (Kiewit)
Caballo	PT0433	21,268	Peabody Caballo Mining LLC (Peabody Energy)
Coal Creek	PT0483	9,741	Thunder Basin Coal Company LLC (Arch Coal)
Cordero Rojo	PT0237	22,537	Cordero Mining LLC (Cloud Peak Energy)
Decker (East and West)	C1983007, C1987001C	11,718	Decker Coal Company, LLC (Lighthouse Resources, Inc.)
Dry Fork	PT0599	6,477	Western Fuels Wyoming Inc. (Western Fuels Association)
Eagle Butte	PT0428	10,253	Contura Coal West LLC (Contura Energy)
North Antelope-Rochelle	PT0569	57,198	Peabody Powder River Mining LLC (Peabody Energy)
Rawhide	PT0240	9,231	Peabody Caballo Mining LLC (Peabody Energy)
Rosebud (A, B, C, and D)	C1986003A, C1984003B, C1985003C, and C1986003D	24,216	Western Energy Company (Westmoreland Coal Company)
School Creek	PT0764	23,039	Peabody School Creek Mining LLC (Peabody Energy)
Spring Creek	C1979012	9,126	Spring Creek Coal LLC (Cloud Peak Energy)
Wyodak	PT0232	5,997	Wyodak Resources Development Corp. (Black Hills Corp.)

Below, we provide a written statement of the apparent violations necessitating inspections and remediation.

I. BACKGROUND

Reclamation of permitted surface coal mining operations is a keystone requirement of SMCRA. The law itself expressly forbids surface coal mining from occurring “where reclamation [] is not feasible.” 30 U.S.C. § 1202(c). To guarantee the success of surface coal mine reclamation, the law requires reclamation to occur “as contemporaneously as possible with the surface coal mining operations.” 30 U.S.C. § 1202(e). In furtherance of this key purpose of SMCRA, OSMRE has established performance standards requiring permittees to “reclaim all

² It was announced on December 11, 2017 that Contura Energy had sold its Belle Ayr and Eagle Butte mines in Wyoming to Blackjewell, LLC. Thus, Contura Coal West LLC may not currently be the permittee for these mines.

lands disturbed by surface mining activities as contemporaneously as practicable with the mining operations[.]” 30 C.F.R. § 816.100.

“Contemporaneous” is not explicitly defined under SMCRA or OSMRE’s SMCRA implementing regulations. However, OSMRE has consistently stated, “A general measurement for contemporaneous reclamation is a comparison of the rate at which lands are being permanently reclaimed (re-graded, topsoiled and seeded) to the rate of disturbance.” Exhibit 1, OSMRE, “Reclamation Success in Wyoming (EY2017)” at 3; Exhibit 2, OSMRE, “Reclamation Success in Montana Evaluation Year (EY) 2017” at 3. As the agency has explained, “Ideally, the rate of reclamation should match the rate of disturbance.” *Id.* at 5.

According to OSMRE, a determination of successful permanent reclamation is based on the number of acres that meet bond release standards and have been released. *See* Exhibit 1 at 1 and Exhibit 2 at 1. Under SMCRA, surface coal mining permittees are required to post bonds to guarantee the clean up of their mines. *See* 30 U.S.C. § 1259 and 30 C.F.R. § 800.11. These bonds are released back to the operators based on the level of successful reclamation.

OSMRE’s SMCRA implementing regulations provide for three phases of bond release. *See* 30 C.F.R. § 800.40(c)(1), (2), and (3). The first is “Phase I” bond release, which generally occurs when a permittee completes the backfilling, regarding, topsoil replacement, recontouring, and drainage control of a bonded area. The second is “Phase II” bond release, which occurs when a permittee has successfully established vegetation whose species composition is commensurate with that of the seed mix of the approved reclamation plan. The third and final is “Phase III” bond release, which occurs when a permittee has successfully completed all surface coal mining and reclamation activities, including achieving postmining land uses and successful revegetation.³

Although OSMRE has oddly claimed that using bond release statistics to evaluate reclamation success “can be misleading,” the agency has not diverged from its position that reclamation success “**will be determined** based on the number of acres that meet the bond release standards and have been released by the state.” Exhibit 1 at 1-2 and Exhibit 2 at 1-3 (emphasis added). Further, although OSMRE has asserted that “compliance with permit commitments” is indicative of compliance with contemporaneous reclamation standards, the agency also has not diverged from its position that contemporaneous reclamation is measured by a comparison of the rate at which lands are being permanently reclaimed to the rate of disturbance. *Id.*

Thus, while OSMRE has apparently attempted to muddy the waters around contemporaneous reclamation, the agency’s fundamental position on the matter remains consistent and clear:

- 1) Contemporaneous reclamation compliance is based on a comparison of the rate at which lands are being permanently reclaimed to the rate of disturbance; and

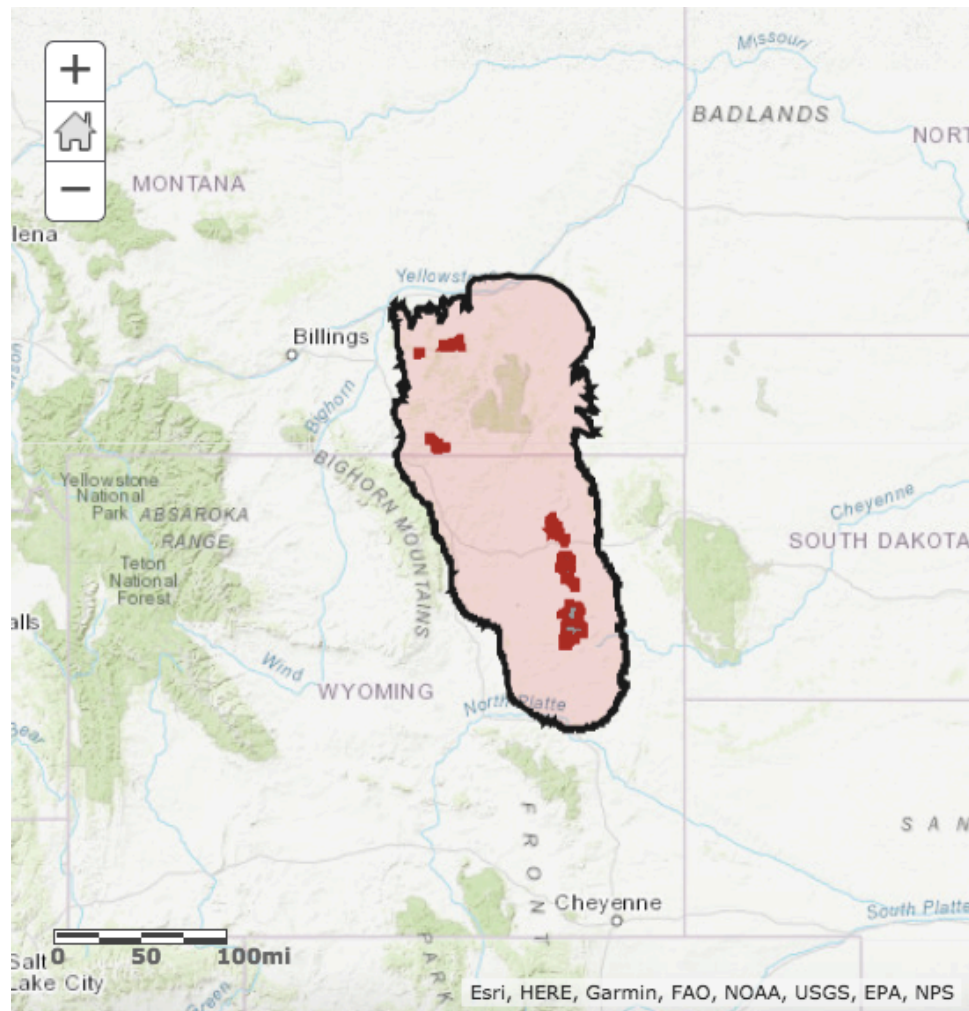
³ The State of Montana has an additional Phase IV of bond release, which occurs when a permittee has successfully completed all surface coal mining and reclamation activities *and* successfully completed all hydrologic reclamation. Phase IV bond release in Montana constitutes final bond release.

2) Successful permanent reclamation is determined based on the number of acres that meet bond release standards and have been released.

More importantly, if a permittee is failing to reclaim as contemporaneously as possible, such a failure would constitute a violation of SMCRA and SMCRA regulations, regardless of whether a permittee is complying with permit commitments.

II. RECLAMATION (OR LACK THEREOF) AT POWDER RIVER BASIN MINES

The Powder River Basin, shown below, is the largest coal producing region in the United States. The region, which straddles eastern Montana and Wyoming, contains 17 massive surface coal mines that collectively produce 42% of all coal in the nation. Of the top 10 producing mines in the U.S., seven are located in the Powder River Basin. These include the North Antelope-Rochelle and Black Thunder mines, which produce 25% of all coal in the U.S. and are the first and second largest in the nation, respectively. These mines use surface coal mining techniques to extract sub-bituminous coal from extensive coal seams near the surface.



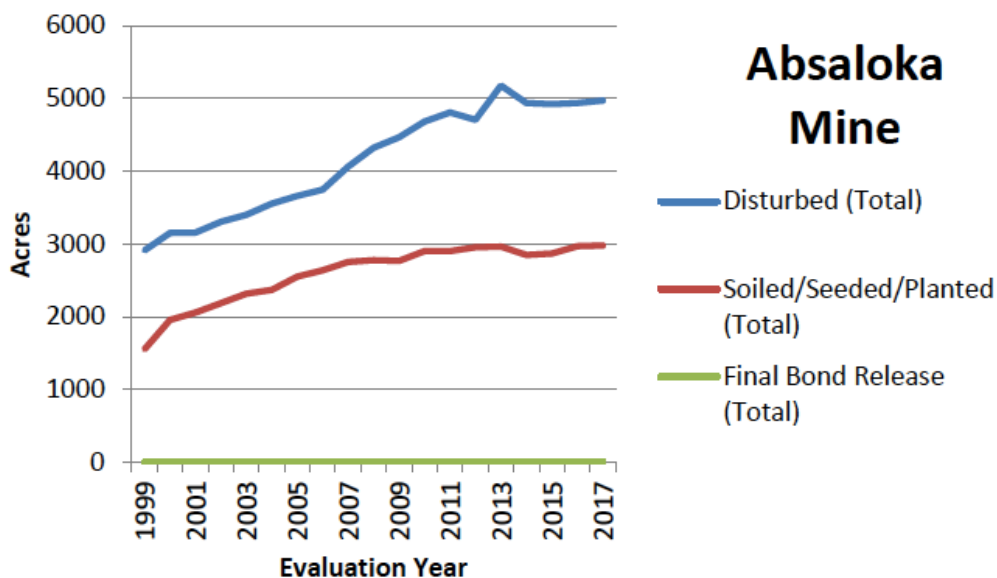
Location of Powder River Basin and Coal Mines Within the Basin.

Reclamation at every active surface coal mine in the Powder River Basin is failing to occur as contemporaneously as possible. Overall, the rate of disturbance at every active mine far outpaces the rate of permanent reclamation. What's more, bond release rates at surface coal mines in the Powder River Basin are dismal. Below, we detail the status of reclamation at the aforementioned surface coal mines and document their failure to comply with contemporaneous reclamation requirements.

A. Absaloka

The Absaloka mine, which began operation in 1985, is located in Big Horn County, Montana. The mine consists of two permitted areas, a north area that is 7,110 acres in size and a south area that is 3,317 acres. Of this permitted acreage, 7,820 acres have been disturbed by mining operations. *See Exhibit 3, OSMRE, "Annual Evaluation Report for the Crow Tribe Indian Lands Program, Evaluation Year 2017" (2017) at 3.* Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. In fact, according to OSMRE, only 2,664 acres—or 34%—have achieved Phase II bond release, which only reflects that soil has been returned and vegetation has been reestablished. Phase II bond release does not indicate that permanent reclamation, including a restoration of ecological function or the achievement of postmining land uses, has been achieved. This lack of permanent reclamation comes even as the Absaloka mine has been operating for nearly 33 years.

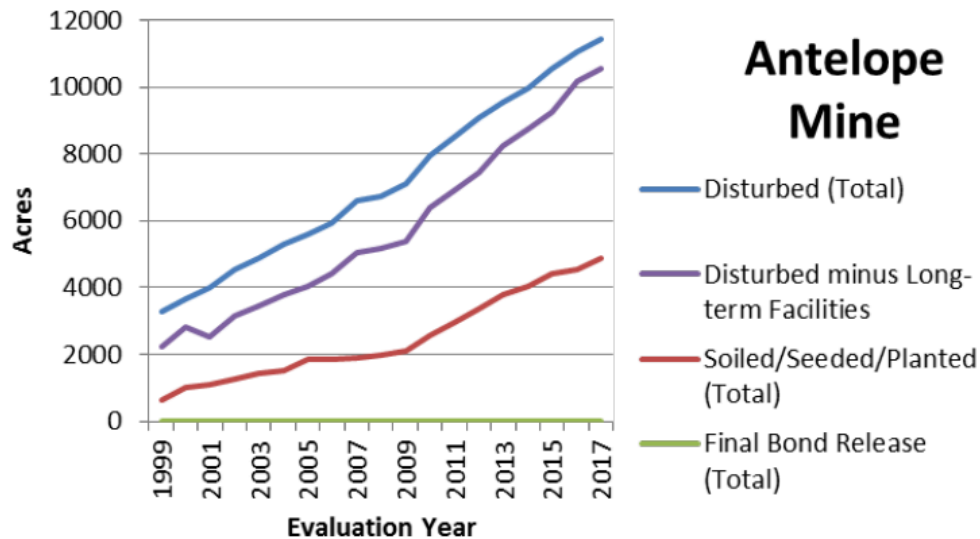
The chart below demonstrates that as disturbance has increased at the Absaloka mine, absolutely no permanent reclamation has been accomplished. *See Exhibit 2 at 9.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



B. Antelope

The Antelope mine, which began operation in 1982, is located in Campbell and Converse Counties, Wyoming. It is the southernmost mine in the Powder River Basin. The mine's permitted area is more than 22,000 acres and mining operations have disturbed more than 11,000 acres. *See Exhibit 1 at 14.* Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of permanent reclamation comes even as the Antelope mine has been operating for more than 35 years.

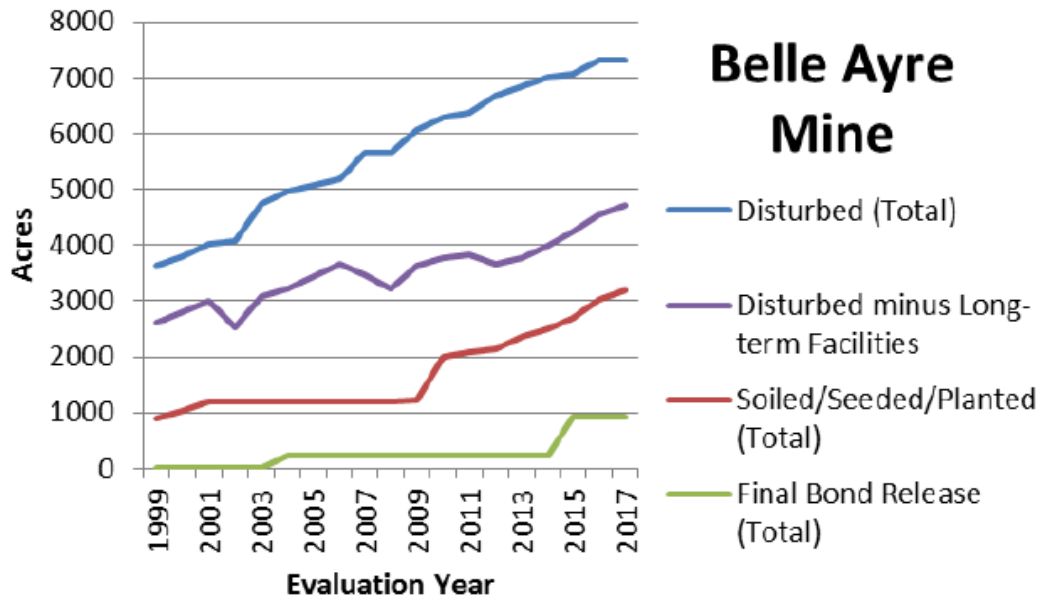
The chart below demonstrates that as disturbance has increased at the Antelope mine, absolutely no permanent reclamation has been accomplished. *See Exhibit 1 at 14.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



C. Belle Ayr

The Belle Ayr mine, which began operation in 1974, is located in Campbell County, Wyoming. The mine's permitted area is more than 13,000 acres and mining operations have disturbed more than 7,000 acres. *See Exhibit 1 at 7.* Of this disturbed acreage, less than 1,000 acres, or less than 14% of disturbed acres, have been reclaimed to the point of achieving final bond release. This lack of meaningful reclamation comes even as the Belle Ayr mine has operated for nearly 45 years.

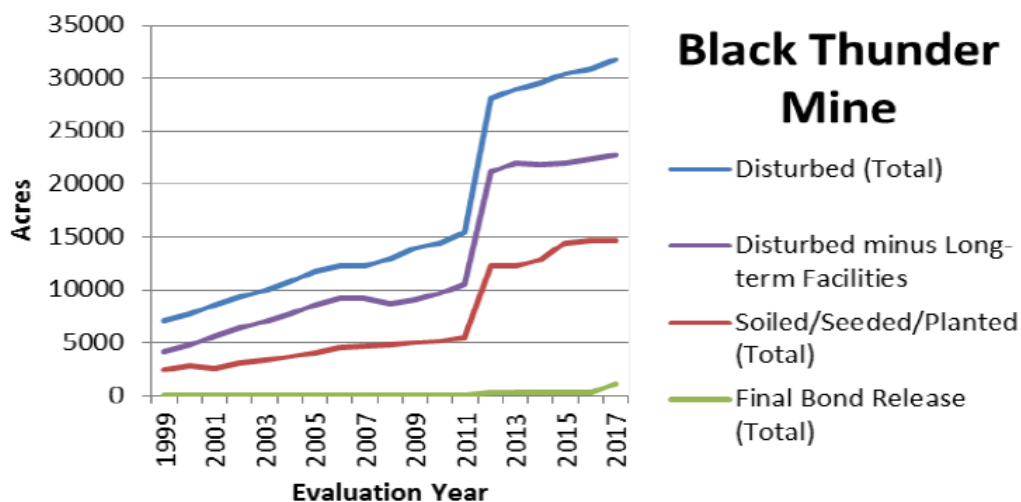
The chart below demonstrates that as disturbance has increased at the Belle Ayr mine, virtually no permanent reclamation has been accomplished. *See Exhibit 1 at 7.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any meaningful amount of permanent reclamation has occurred.



D. Black Thunder

The Black Thunder mine, which began operation in 1974, is located in Campbell County, Wyoming. The mine's permitted area is more than 49,000 acres and mining operations have disturbed more than 30,000 acres. *See Exhibit 1 at 8.* Of this disturbed acreage, far less than 1,000 acres, or around 3% of disturbed acres, have been reclaimed to the point of achieving final bond release. This lack of meaningful reclamation comes even as the Black Thunder mine has operated for nearly 45 years.

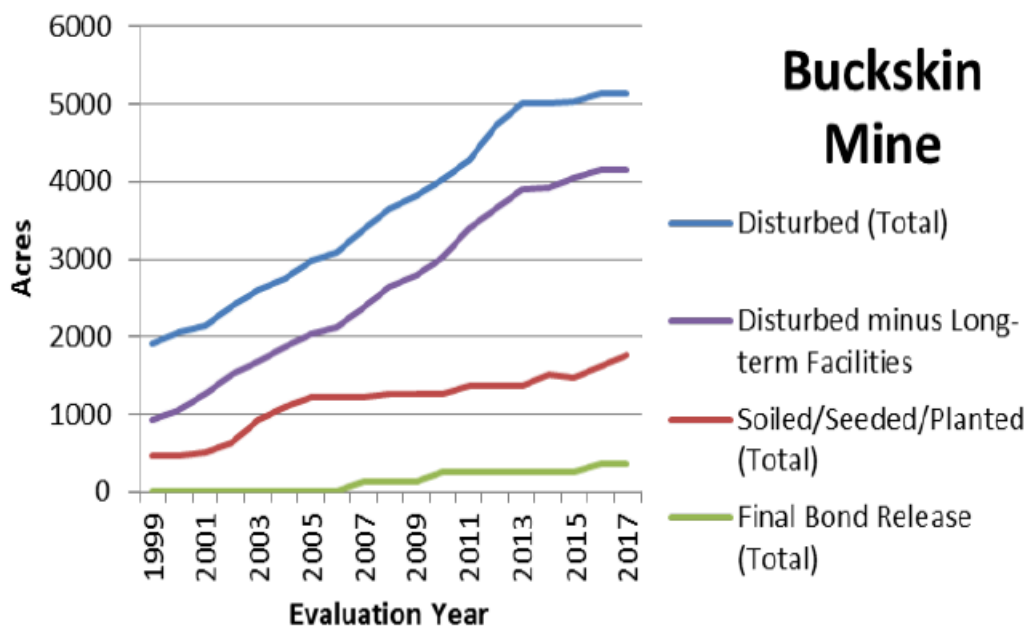
The chart below demonstrates that as disturbance has increased at the Black Thunder mine, virtually no permanent reclamation has been accomplished. *See Exhibit 1 at 8.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any meaningful amount of permanent reclamation has occurred. Certainly, reclamation is not happening as contemporaneously as possible.



E. Buckskin

The Buckskin mine, which began operation in 1980, is located in Campbell County, Wyoming. It is the northernmost mine in the Wyoming portion of the Powder River Basin. The mine's permitted area is more than 9,000 acres and mining operations have disturbed more than 5,000 acres. *See Exhibit 1 at 13.* Of this disturbed acreage, less than 500 acres, or less than 10% of disturbed acres, have been reclaimed to the point of achieving final bond release. This lack of meaningful reclamation comes even as the Buckskin mine has operated for nearly 40 years.

The chart below demonstrates that as disturbance has increased at the Buckskin mine, virtually no permanent reclamation has been accomplished. *See Exhibit 1 at 13.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any meaningful amount of permanent reclamation has occurred.

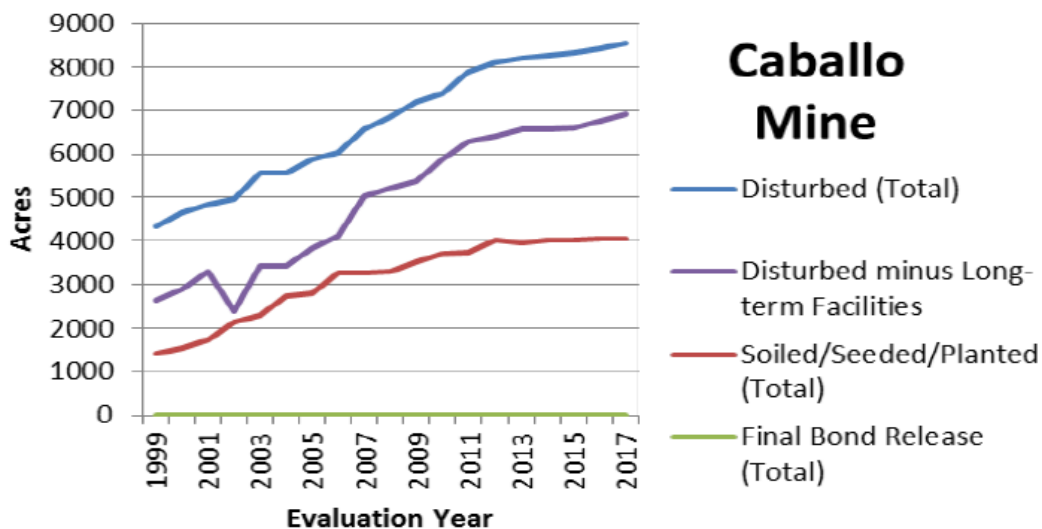


F. Caballo

The Caballo mine, which began operation in 1976, is located in Campbell County, Wyoming directly south of the town of Gillette. The mine's permitted area is more than 21,000 acres and mining operations have disturbed more than 8,000 acres. *See Exhibit 1 at 10.* Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Caballo mine has operated for more than 40 years.

The chart below demonstrates that as disturbance has increased at the Caballo mine, no permanent reclamation has been accomplished. *See Exhibit 1 at 10.* Although the chart indicates

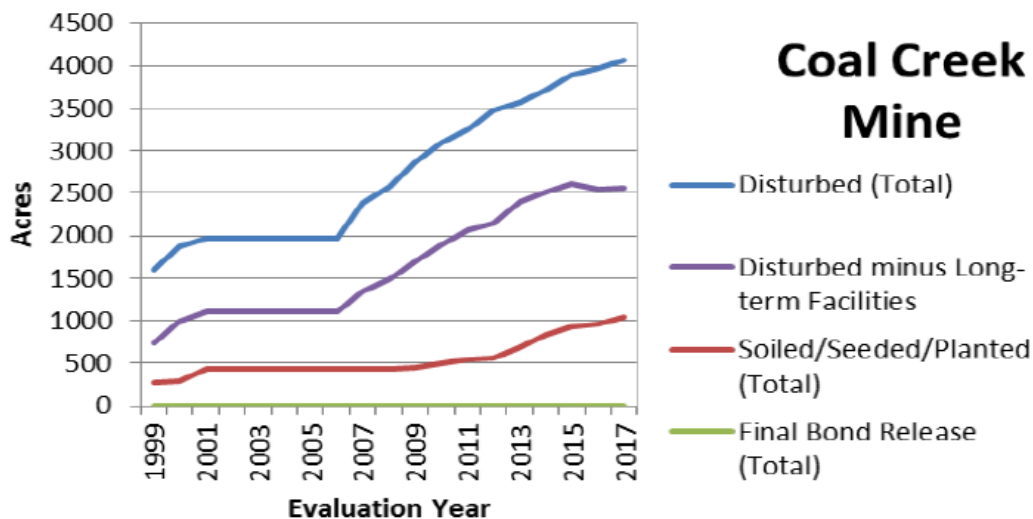
that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



G. Coal Creek

The Coal Creek mine, which began operation in 1979, is located in Campbell County, Wyoming. The mine's permitted area is more than 9,000 acres and mining operations have disturbed more than 4,000 acres. *See Exhibit 1 at 11.* Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Coal Creek mine has operated for nearly 40 years.

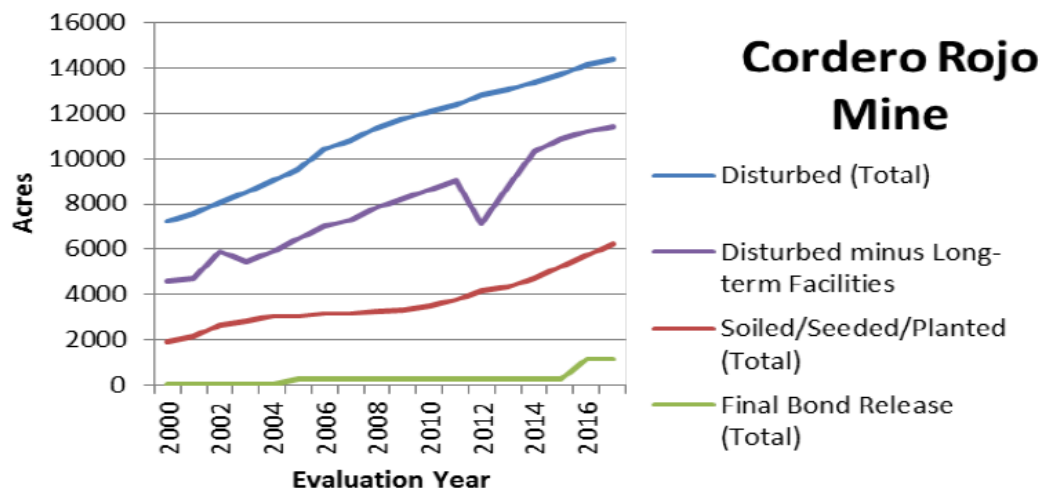
The chart below demonstrates that as disturbance has increased at the Coal Creek mine, no permanent reclamation has been accomplished. *See Exhibit 1 at 11.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



H. Cordero Rojo

The Cordero Rojo mine, which began operation in 1975, is located in Campbell County, Wyoming. The mine's permitted area is more than 21,000 acres and mining operations have disturbed more than 14,000 acres. *See Exhibit 1 at 8.* Of this disturbed acreage, only a little more than 1,000 acres, or a little more than 7% of disturbed acres, have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Cordero Rojo mine has operated for more than 40 years.

The chart below demonstrates that as disturbance has increased at the Cordero Rojo mine, minimal permanent reclamation has been accomplished. *See Exhibit 1 at 10.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any meaningful amount of permanent reclamation has occurred over the 40-year life of the mine.

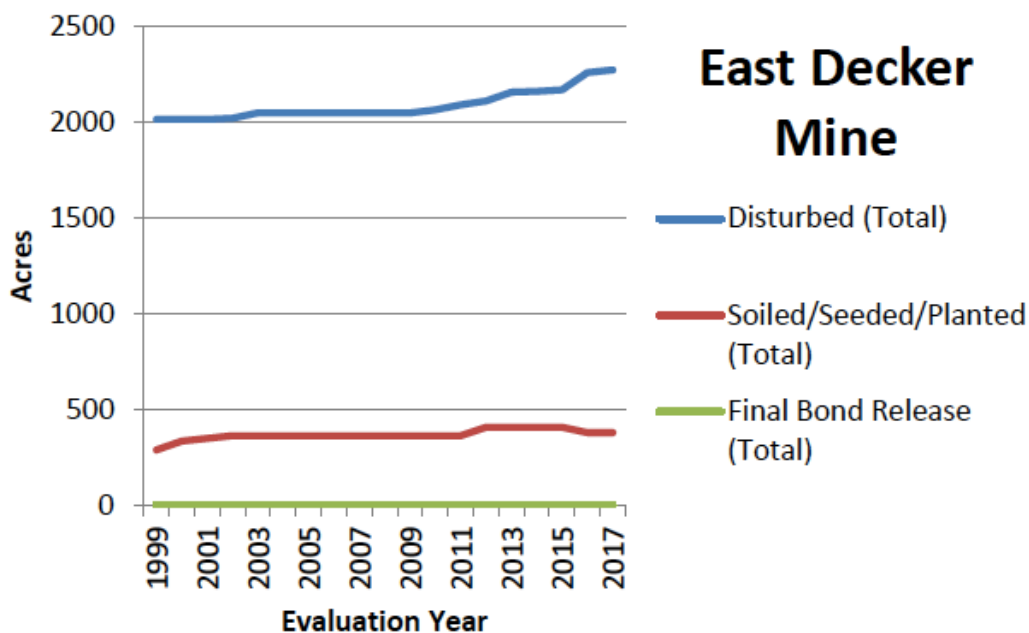
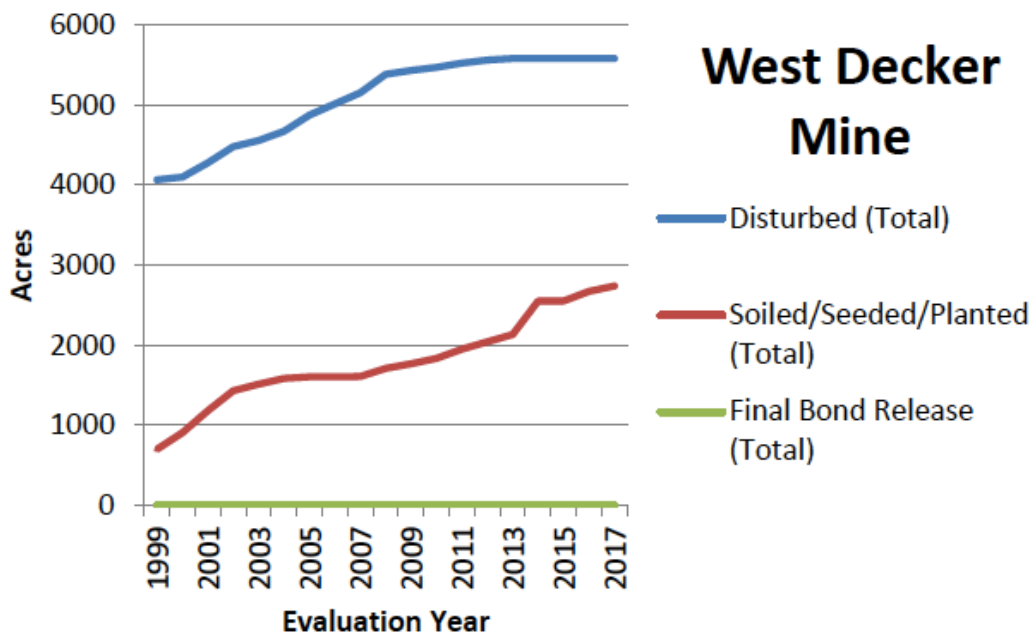


I. Decker

The Decker mine, which began operation in 1972, is located in Big Horn County, Montana. The mine includes two permitted areas, one for the Decker West mine and one for the Decker East mine, which together encompass more than 11,000 acres. The Decker West mine is permitted at more than 7,000 acres and more than 5,500 acres have been disturbed. *See Exhibit 2 at 10.* The Decker East mine is permitted at more than 4,000 acres and more than 2,000 acres have been disturbed. *Id.* Of the disturbed acreage at both the Decker West and Decker East mines, zero acres have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Decker mine has operated for more than 45 years.

The charts below demonstrate that as disturbance has increased at the Decker West and Decker East mines, no permanent reclamation has been accomplished. *See Exhibit 2 at 10.*

Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.

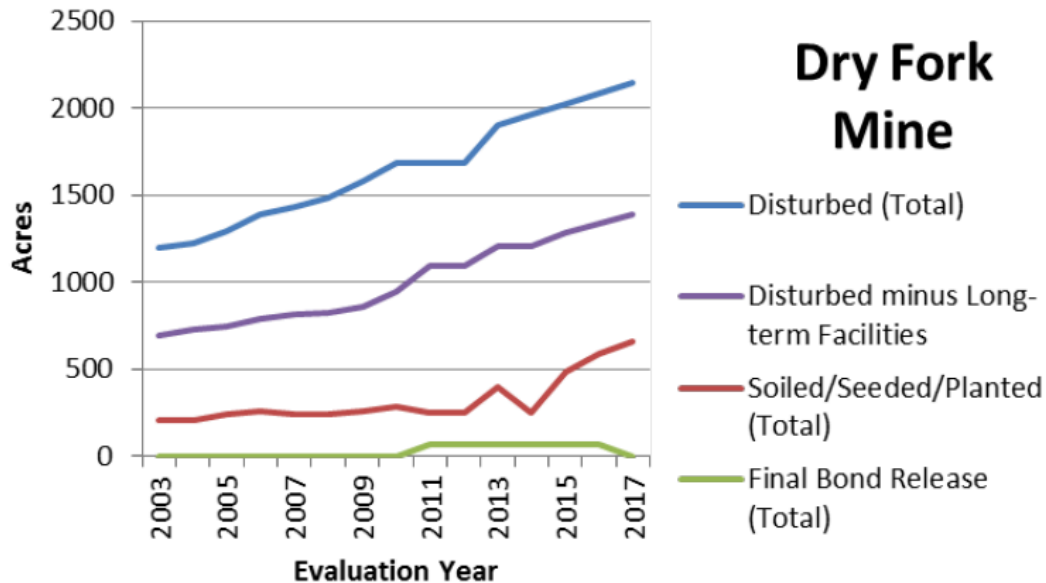


J. Dry Fork

The Dry Fork mine, which began operation in 1987, is located in Campbell County, Wyoming. The mine's permitted area is more than 6,400 acres and mining operations have disturbed more than 2,000 acres. *See* Exhibit 1 at 15. Of this disturbed acreage, OSMRE reports that while around 100 acres were reclaimed to the point of achieving final bond release, as of

2017, zero acres are reported to have achieved final bond release. In any case, in the 30 year life of Dry Fork, only around 5% of the mine's disturbed acreage appears to have been permanently reclaimed.

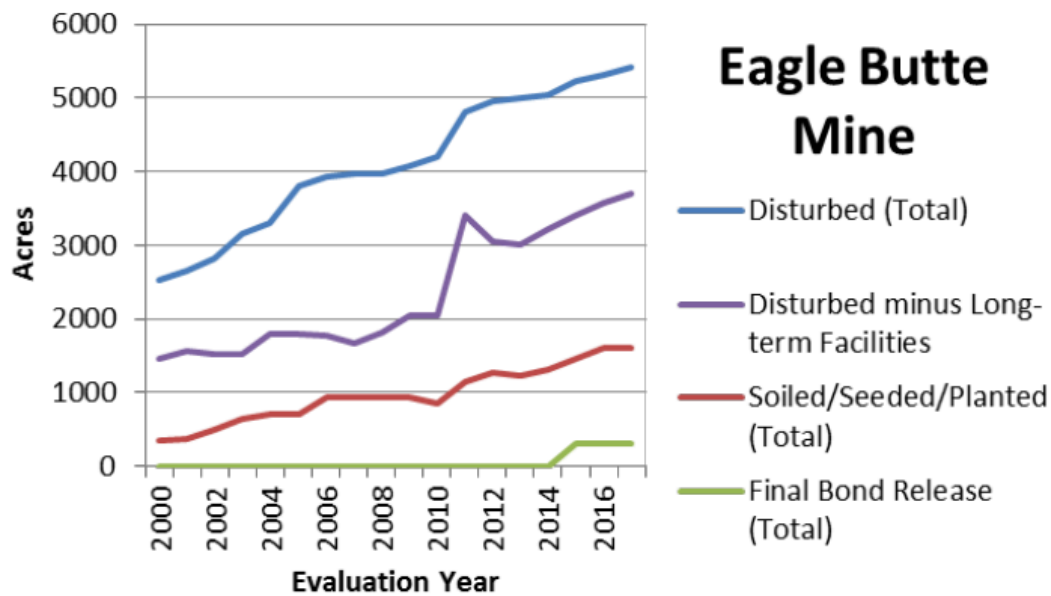
The chart below demonstrates that as disturbance has increased at the Dry Fork mine, no permanent reclamation has been accomplished. *See Exhibit 1 at 15.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



K. Eagle Butte

The Eagle Butte mine, which began operation in 1976, is located in Campbell County, Wyoming. The mine's permitted area is more than 10,200 acres and mining operations have disturbed nearly 5,500 acres. *See Exhibit 1 at 13.* Of this disturbed acreage, nearly 400 acres have been reclaimed to the point of achieving final bond release, or around 7% of disturbed mine acreage. This lack of meaningful permanent reclamation comes even as the Eagle Butte mine has operated for more than 40 years.

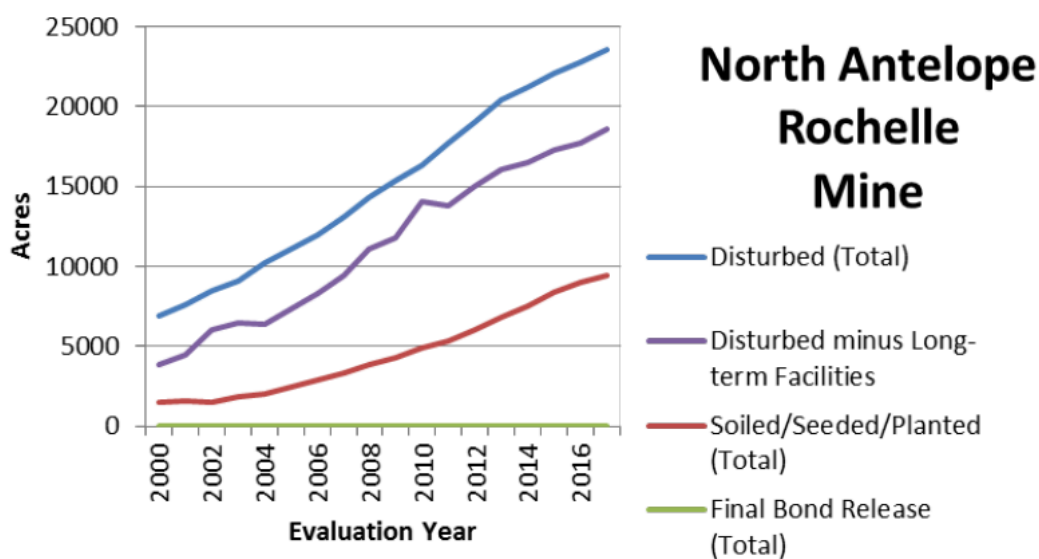
The chart below demonstrates that as disturbance has increased at the Eagle Butte mine, very little permanent reclamation has been accomplished. *See Exhibit 1 at 13.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any meaningful amount of permanent reclamation has occurred.



L. North Antelope-Rochelle

The North Antelope-Rochelle mine, which began operation in 1984, is located in Campbell County, Wyoming. The mine's permitted area is more than 57,000 acres and mining operations have disturbed nearly 25,000 acres. *See Exhibit 1 at 14.* Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of permanent reclamation comes as the North Antelope-Rochelle mine has operated for 35 years.

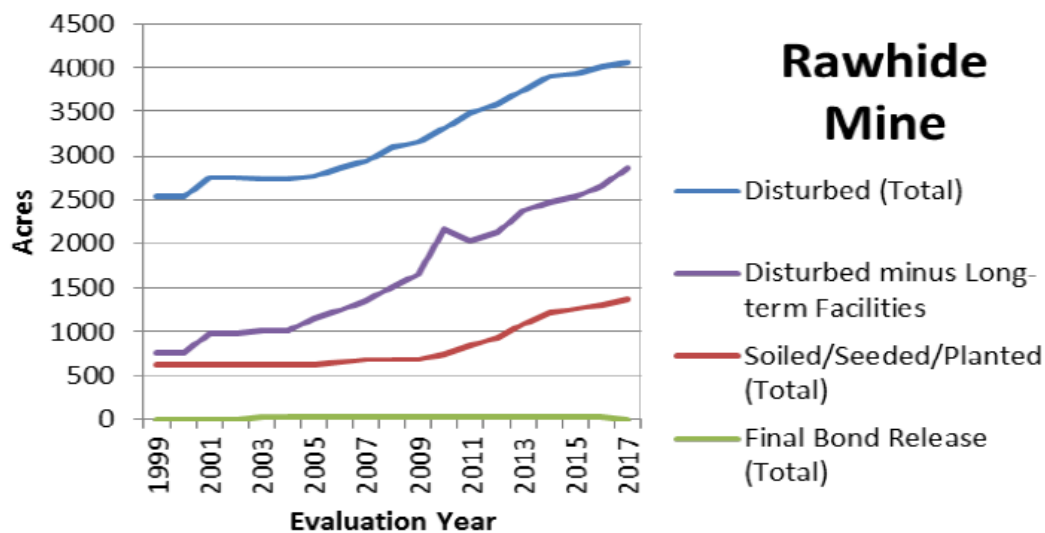
The chart below demonstrates that as disturbance has increased at the North Antelope-Rochelle mine, no permanent reclamation has been accomplished. *See Exhibit 1 at 14.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



M. Rawhide

The Rawhide mine, which began operation in 1975, is located in Campbell County, Wyoming. The mine's permitted area is more than 9,200 acres and mining operations have disturbed more than 4,000 acres. *See* Exhibit 1 at 9. Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Rawhide mine has operated for more than 40 years.

The chart below demonstrates that as disturbance has increased at the Rawhide mine, no permanent reclamation has been accomplished. *See* Exhibit 1 at 9. Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



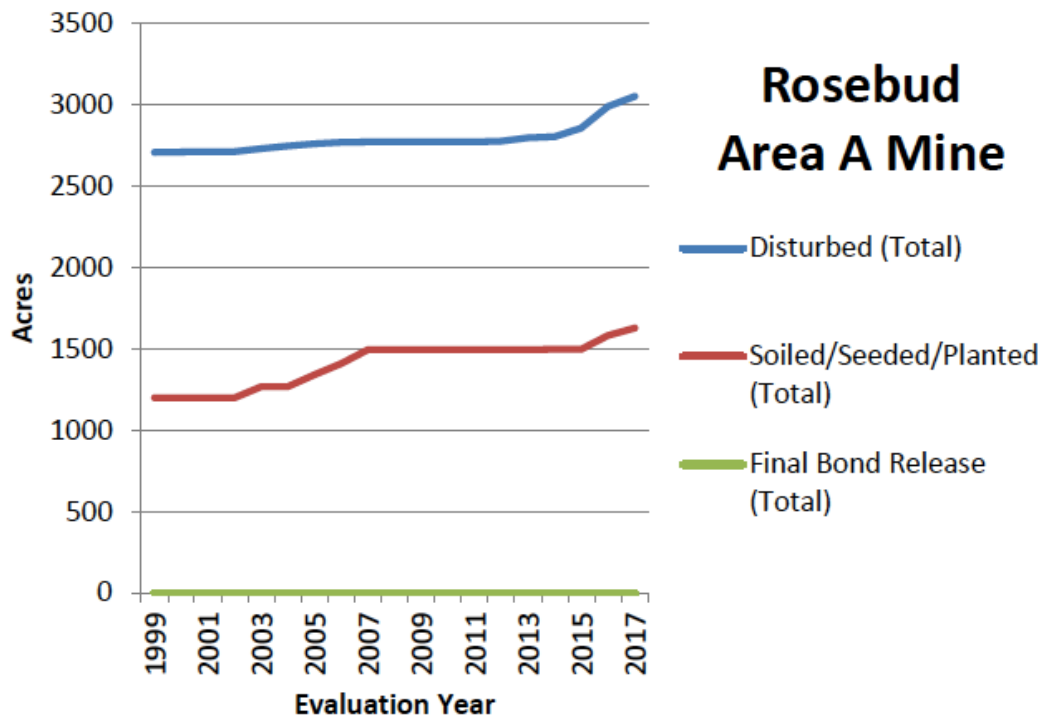
N. Rosebud

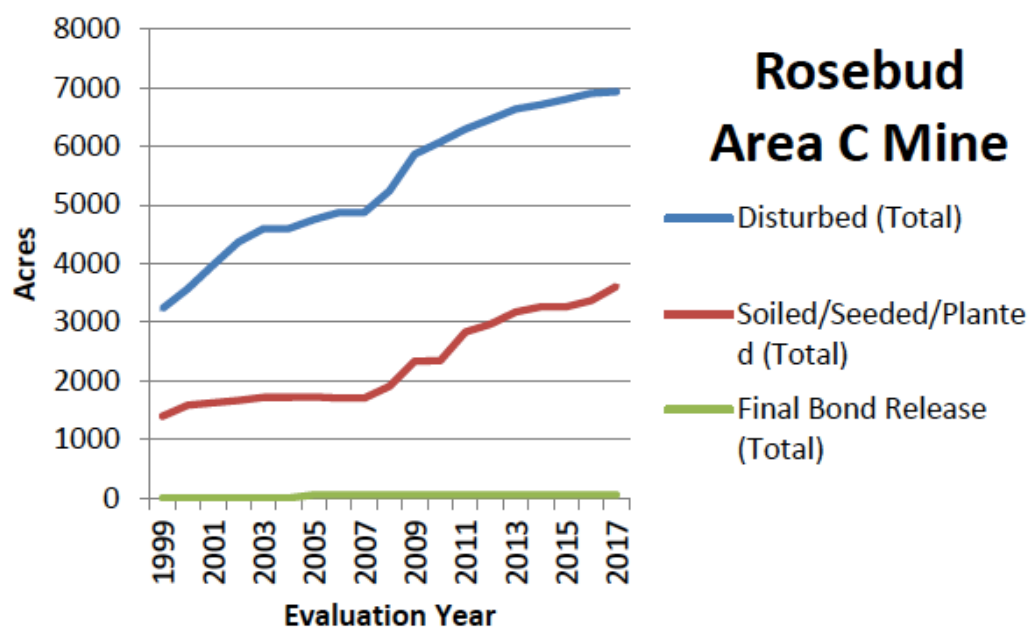
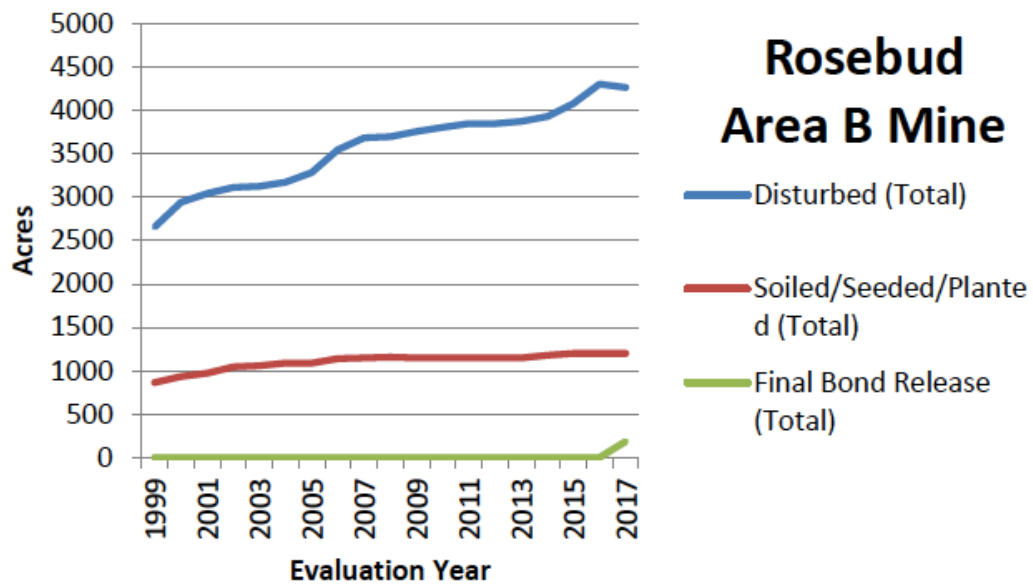
The Rosebud mine, which began operation in 1968, is located in Rosebud County, Montana. The mine consists of five primary permitted areas, Rosebud Area A, Area B, Area C, Area D, and Area E, although this complaint only addresses reclamation at Areas A, B, C, and D. Area A is permitted at more than 4,000 acres and more than 3,000 acres have been disturbed. *See* Exhibit 2 at 13. Area B is permitted at more than 6,000 acres and more than 4,000 acres have been disturbed. *Id.* at 14. Area C is permitted at more than 9,000 acres and nearly 7,000 acres have been disturbed. *Id.* Area D is permitted at more than 4,500 acres and more than 3,000 acres have been disturbed. *Id.*

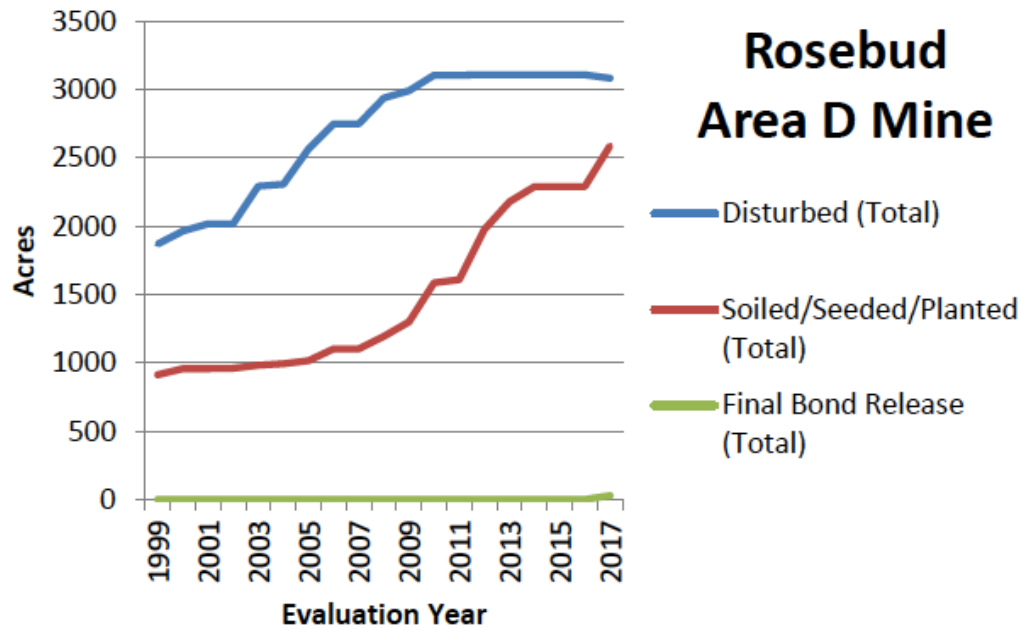
Of the disturbed areas at the Rosebud mine, minimal amounts of final bond release have occurred over the 50-year life of the mine. For Area A, less than 100 acres of final bond release have been achieved, or around 3% of disturbed acreage. *See* Exhibit 2 at 13. For Area B, less than 250 acres of final bond release have been achieved, or around 6% of disturbed acreage. *Id.* at 14. For Area C, less than 50 acres of final bond release have been achieved, or less than 1% of

disturbed acreage. *Id.* And for Area D, a little more than 200 acres of final bond release have been achieved, or a little more than 6% of disturbed acreage. *Id.*

The charts below demonstrate that as disturbance has increased at the Rosebud mine Areas A, B, C, and D, no meaningful amount of permanent reclamation has been accomplished. *See Exhibit 2 at 13-14.* At best, perhaps 6% of disturbed acreage at Rosebud Area B has been permanently reclaimed. Although the charts indicate that some level of backfilling, seeding, and planting has occurred, it does not indicate that any meaningful amount of permanent reclamation has occurred at Rosebud Areas A, B, C, and D.



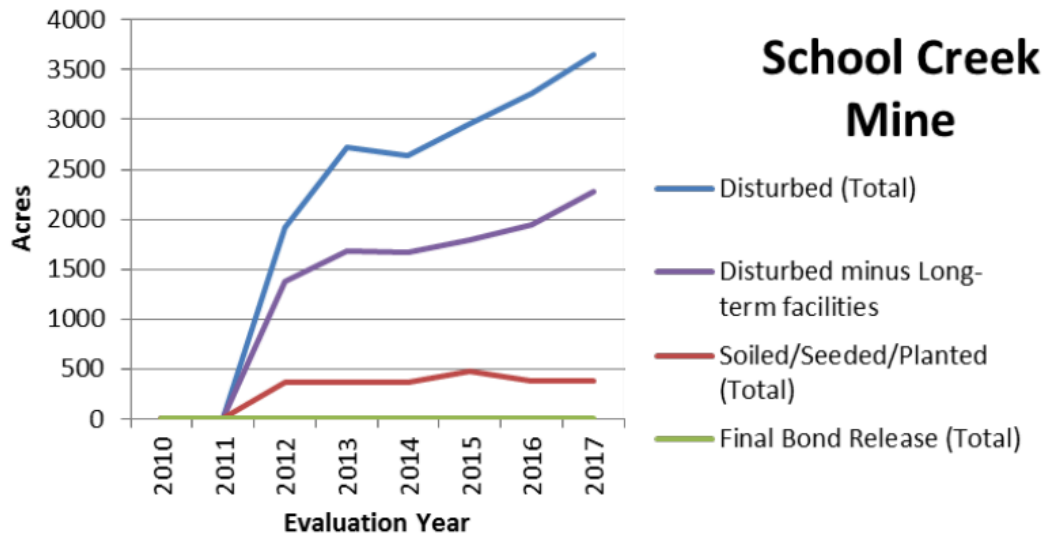




O. School Creek

The School Creek mine began operation in 2009, although coal mining previously occurred within the permit area. The mine is located in Campbell County, Wyoming. The mine’s permitted area is more than 23,000 acres and mining operations have disturbed more than 3,500 acres. *See Exhibit 1 at 16.* Of this disturbed acreage, zero acres have yet to be reclaimed to the point of achieving final bond release.

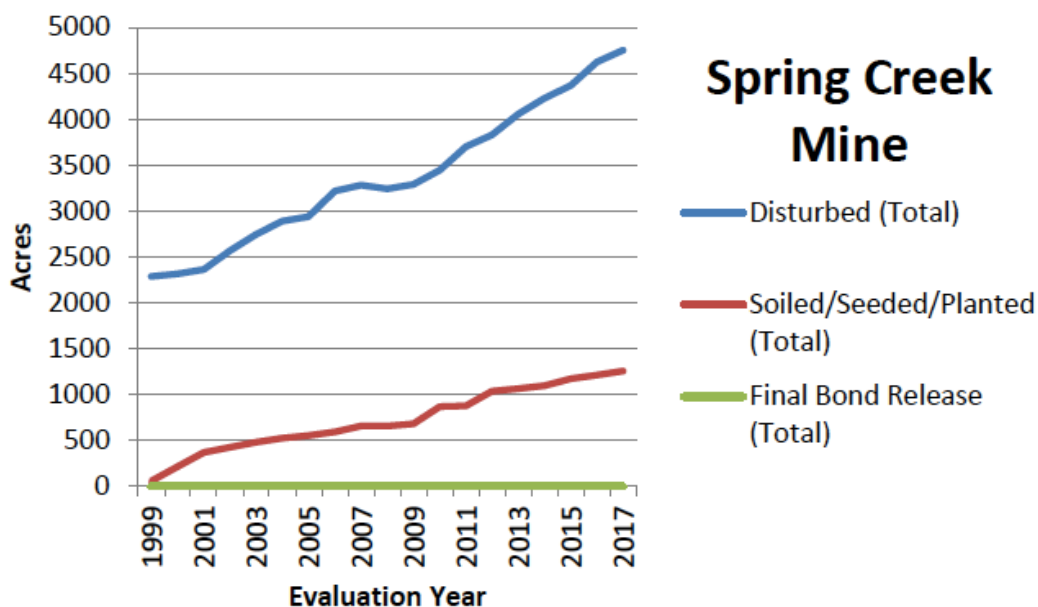
The chart below demonstrates that as disturbance has increased at the School Creek mine, no permanent reclamation has been accomplished. *See Exhibit 1 at 16.* Although contemporary mining operations at School Creek have only occurred since 2011, the lack of any permanent reclamation of past coal mining activities within the permit area is of concern.



P. Spring Creek

The Spring Creek mine, which began operation in 1980, is located in Big Horn County, Montana. The mine's permitted area is more than 9,000 acres and mining operations have disturbed more than 4,500 acres. *See Exhibit 2 at 12.* Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Spring Creek mine has operated for nearly 40 years.

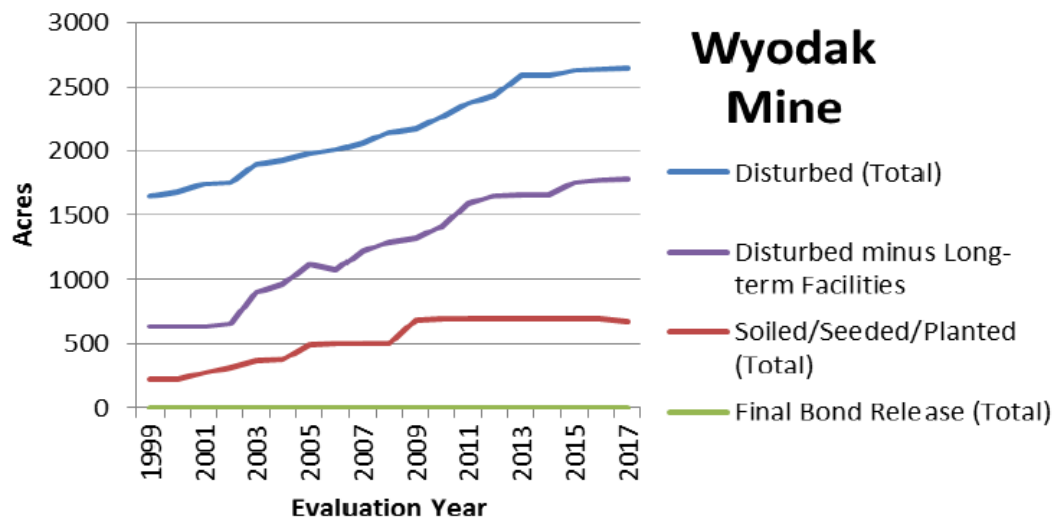
The chart below demonstrates that as disturbance has increased at the Spring Creek mine, no permanent reclamation has been accomplished. *See Exhibit 2 at 12.* Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



Q. Wyodak

The Wyodak mine, which began operation in 1974, is located in Campbell County, Wyoming. The mine's permitted area is nearly 6,000 acres and mining operations have disturbed more than 2,500 acres. *See* Exhibit 1 at 12. Of this disturbed acreage, zero acres have been reclaimed to the point of achieving final bond release. This lack of any permanent reclamation comes even as the Wyodak mine has now operated for nearly 45 years.

The chart below demonstrates that as disturbance has increased at the Wyodak mine, no permanent reclamation has been accomplished. *See* Exhibit 1 at 12. Although the chart indicates that some level of backfilling, seeding, and planting has occurred, it does not indicate that any amount of permanent reclamation has occurred.



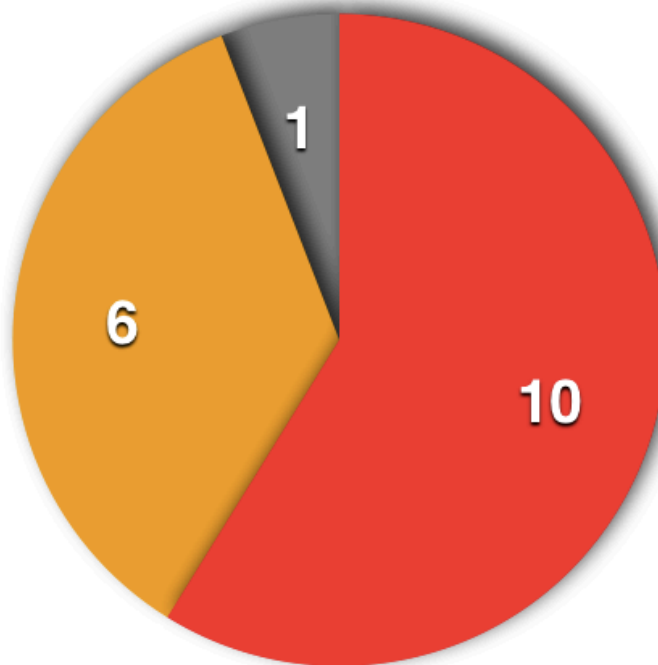
III. VIOLATIONS OF SMCRA

Where there is reason to believe that a violation of SMCRA exists, OSMRE is required to notify the state regulatory authority pursuant to 30 C.F.R. § 842.11(b)(1)(ii)(B). Where a state fails to respond within 10 days, or otherwise fails to take appropriate action, OSMRE must conduct an inspection of mining operations. If a violation is found as a result of an inspection, OSMRE must issue a “notice of violation” pursuant to 30 C.F.R. § 843.12(a) to remedy the violations.

Based on the aforementioned information, there is reason to believe that violations of SMCRA are occurring with regards to 17 surface coal mining operations in the Powder River Basin of Montana and Wyoming. Specifically, these mines are failing to meet SMCRA's requirement that reclamation occur as “contemporaneously as possible,” violating 30 U.S.C. § 1202(e) and 30 C.F.R. § 816.100. The failure of these surface coal mining operations to meet SMCRA's contemporaneous reclamation requirements is demonstrated by the fact that all 17 mines are failing to achieve sufficient levels of permanent reclamation. Namely, the rate of disturbance is far outpacing the rate of permanent reclamation. For many mines, the rate of

permanent reclamation appears to be zero. The complete and utter lack of adequate permanent reclamation is underscored by the fact that the amount of acres that have achieved final bond release at the mines is minimal to zero. In fact, as the chart below shows, of the 17 mines identified above, ten (or 60%) report zero acres of final bond release. Of these mines, six—Caballo, Coal Creek, Decker, Rawhide, Spring Creek, and Wyodak have been operating for 38 or more years. Of the remaining mines, only one, the Belle Ayr mine, appears to have achieved final bond release for more than 10% of its disturbed acreage while six others have achieved final bond release on less than 10% of their disturbed acreage.

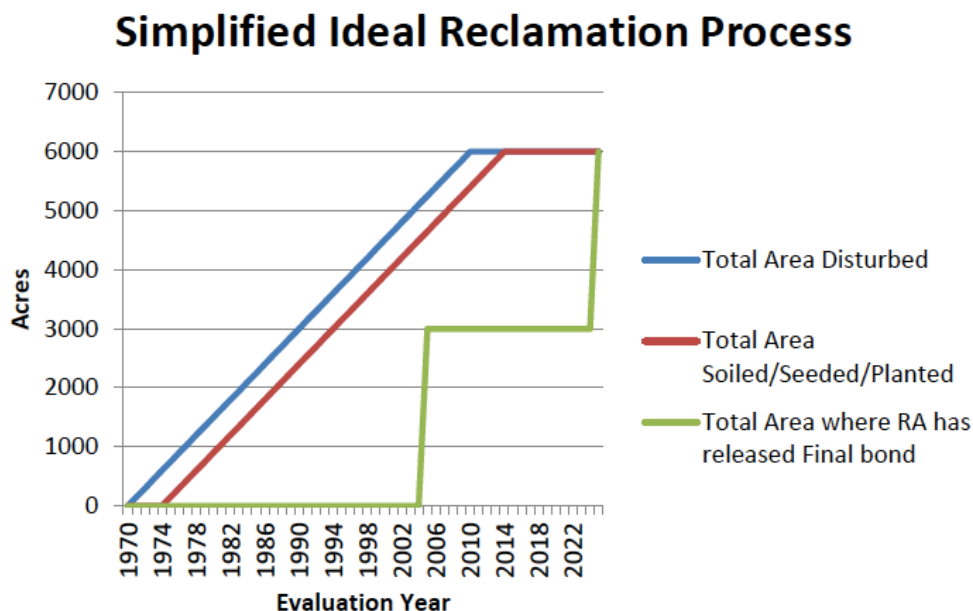
- **0 Acres of Final Bond Release**
- **1-9% of Disturbed Acres Achieved Full Bond Released**
- **10-20% of Disturbed Acres Achieved Full Bond Released**



Number of Powder River Basin mines that have achieved 0 acres of final bond release and number of mines that have achieved final reclamation on a percentage of disturbed acres. Data from OSMRE reclamation oversight reports. See Exhibits 1 and 2.

Although some level of backfilling, seeding, and planting has occurred at the 17 mines, OSMRE continues to make explicit that reclamation success “will be determined based on the number of acres that meet the bond release standards and have been released by the state.” Here, while backfilling, seeding, and planting may be occurring, there is nothing to suggest that this represents permanent reclamation or that lands have been restored such that final bond release is occurring. Most significantly, there is nothing to suggest that any backfilling, seeding, and planting has occurred such that the backfilling and grading, and revegetation performance standards under 30 C.F.R. § 816.101 through 30 C.F.R. § 816.116 have been fully met at any of the 17 mines.

The lack of sufficient contemporaneous reclamation at the aforementioned mines is underscored by their failure to comport with OSMRE’s “ideal reclamation process,” which is illustrated by the agency in the graph below. *See also* Exhibit 1 at 6.



The agency explains this chart as follows:

The above graph is a simple representation of the reclamation process. Disturbance, represented by the blue line, occurs when the mine begins operation. For the first couple of years, a boxcut is formed, with adjacent spoil piles. Reclamation, represented by the red line, begins several years after the start of operations, when enough spoil has accumulated to warrant backfilling, soiling, and seeding. Ideally, the red line should run parallel to the blue line. The slope (the rate of reclamation) of the red line should be equal to the slope (the rate of disturbance) of the blue line. The green line represents acres that achieve final bond release. A bond release package requires an investment of time and money from the permittee. A comparable amount of effort and expense is required to develop a bond release package for a small plot of land as for a large one. It is also not a requirement for permittees to achieve Phase I or II bond release incrementally, prior to achieving final bond release. So, it is often more cost effective for permittees to wait until large areas of land are eligible for release until developing and submitting a bond release application. And those applications often bypass earlier incremental bond releases and attempt to qualify for Final bond release in one application package.

Exhibit 2 at 6-7. Put another way, while the rate of final bond release may lag and occur in sporadic, large blocks, it is still expected to occur over the life of a mine. As the “ideal” chart above illustrates, a mine beginning operations in 1970 would be expected to achieve a large amount of initial final bond release within its first 30-40 years. Although this may be a “simplification,” it is nevertheless informative. When applied to the 17 mines identified above, one can see that virtually none of them come anywhere close to matching the “ideal reclamation

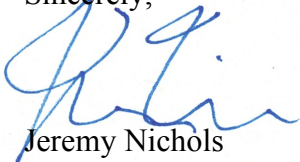
process,” a strong indication that reclamation is not occurring as contemporaneously as possible. Six mines in particular, the Caballo, Coal Creek, Decker, Rawhide, Spring Creek, and Wyodak mines, have operated for nearly 40 or more years, yet have achieved zero acres of final bond release.

In any case, because there is reason to believe that violations of SMCRA’s contemporaneous reclamation requirements are occurring at 17 surface coal mines in the Powder River Basin of Montana and Wyoming, OSMRE has a duty to notify state regulatory authorities pursuant to 30 C.F.R. § 842.11(b)(1)(ii)(B) and to conduct its own inspection if the states fail to respond to otherwise fail to take appropriate action. If OSMRE conducts its own inspection, the agency must take appropriate action in accordance with 30 C.F.R. § 842.12.

IV. CONCLUSION

We look forward to a timely response from OSMRE to this complaint. It is critical that the agency ensure reclamation is occurring as expeditiously as possible at surface coal mines in the Powder River Basin. Thank you for your time and attention to this matter.

Sincerely,



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